

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
FEBRUARY 7, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Cameron, Spain, Hutchison, Cunningham

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

Chairman Conze called the meeting to order at 8:00 P.M. and read the first agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Land Filling & Regrading Application #267, Scott Leahy, 117 Leeuwarden Road. Proposing to fill, regrade, and construct associated retaining walls along the sides and rear of the property, and perform related site development activities. The subject property is located on the west side of Leeuwarden Road, approximately 800 feet south of its intersection with Old Oak Road, and is shown on Assessor's Map #29 as Lot #122, and is in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 1/10/2012. DEADLINE TO CLOSE PUBLIC HEARING IS FEBRUARY 14, 2012 UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Susan Cameron left the meeting and did not participate in the application in order to avoid any perception of a conflict of interest.

Doug St. John of Swimm Pools explained that the revised plans have been submitted to the Commission. These revised plans incorporate drainage details and landscaping at the bottom of the proposed retaining wall. He said that enough drainage facilities have been incorporated to handle the increase in storm water run-off and also to accept the drawdown of water at the end of the pool season and before the pool is winterized. The design takes the run-off from the leaders from the back of house and puts it into a series of cultec units that will allow water to absorb into the ground. Professional Engineer Gregory Pidluski said that the calculations for the proposed site changes do not include counting the swimming pool area. Their storm water retention system is designed to accommodate approximately 850 cubic feet of underground water storage and dispersion. Rather than picking up the swimming pool patio area, the system is designed to take in the water from the roof gutters and leaders from the back of the house.

In response to a question about the chlorinated water from the pool being pumped into the cultec units, Mr. Pidluski said that the chlorine in this form would not be detrimental to the environment when it is discharged into the cultec system. Mr. St. John said that the chlorine in the pool tends to dissipate at the end of the swimming pool season and it would not be concentrated as pool drawdown for winterization is pumped into the drainage system. Mr. Pidluski said that the overflow from the cultec system is a yard drain to be located on the north portion of the site. The overflow would then go downhill and into a man-made swale on the neighbor's property to the

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west. He said that the calculations show that there would be a net reduction in total storm water runoff. He said that there would be a marginal increase that the area of the swimming pool is included in the calculations. He said that typically that the end of season drawdown of water from the pool is discharged on the surface, not into an underground drainage system.

Mr. Spain noted that a sheet flow of storm water runoff is better than concentrated runoff at a yard drain. Mr. Pidluski said that in storms of 25 year design or less, there would be only ground water discharge, no overflow. He said that the retaining wall on the back of the property could be specifically designed to act as a level spreader and create a sheet flow of at least 10 or 12 feet in width. Mr. Spain said that it would be best to maximize the spreading effect of the retaining wall rather than creating any concentrated area. Mr. Pidluski said that they could also add a strip of crushed stone at the upland side of the retaining wall so that it would dissipate storm water over a wider area. Mr. Spain said that dispersing the storm water rather than creating a gully of concentration would also increase the amount of absorption of the water into the ground.

In response to questions, Mr. Pidluski said that fill is needed in order to create the swimming pool and flat patio area but water from that area is not proposed to be managed. It would drain down toward the neighbors. Runoff from the house is proposed to be managed. Mr. Hutchison said there is a need to properly manage the storm water runoff from the pool and patio area in order to avoid any impact to the neighbor. He said that it is only logical that the project protect the neighbor. He said that the design should include culvert units or some other drainage system on the west side of the swimming pool and patio area. Mr. Pidluski said that they could install a reverse curtain drain to disperse the over-land flow. He said that the applicant would accept the condition of approval that such a system be designed.

John Forlivia of 131 Hoyt Street expressed concern because he is the property owner whose land is located downhill and to the west of the proposed filling and regrading. He said that the proposed filling and regrading will have a mafia block retaining wall, which would apparently serve as a waterfall directing water towards his property. He said a swale had to be constructed through his property due to the previous water problems that were experienced after the house was constructed. He said that the water needs to be managed from the proposed filling and regrading site all the way down to Hoyt Street. He was skeptical that the applicant's design would adequately protect his property. Mr. Spain asked the applicant what could be done if the project were implemented and a water problem is experienced on the downhill property. Mr. Pidluski said that the downhill property owner has already indicated that there already has been a drainage problem but there is no documentation of that problem. Mr. Spain said that the Commission is very concerned about the reality of the actual storm water flows versus the calculations of no net increase in storm water runoff. The Commission is also concerned about the visual aspects of the retaining wall that would be located uphill of the neighboring property. He said that another problem that commonly occurs is that owners dump yard waste over their retaining walls and it becomes a problem for the downhill property. Mr. Pidluski said that there is approximately 150 feet of native vegetation growth and a change in ground elevation between the proposed retaining wall and the neighbor's back lawn.

Mr. Conze said that the applicant still needs to work on resolving the drainage issue and providing a detailed landscaping plan that is satisfactory to the neighbor and the Commission. He suggested that the Public Hearing be continued so that detailed revised plans can be submitted. Mr. Ginsberg indicated that the Public Hearing could be continued on February 28, 2012 but the Commission

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would need the applicant's consent to extend the Public Hearing to that date. On behalf of the applicant, Mr. St. John agreed to that extension. The Public Hearing regarding this matter will be continued on February 28, 2012 at 8 P.M. in Room 206 in the Darien Town Hall.

Chairman Conze opened the General Meeting. Susan Cameron returned to the meeting to participate in the discussions on the remaining agenda items. Chairman Conze read the following agenda item:

GENERAL MEETING

Amendment of Special Permit Application #195, Hoyt Street Pumping Station.

Request to install antenna onto the existing pump station

Marc McEwan, Deputy Fire Marshal and Director of Emergency Services, said that the upper Hoyt Street area is a low valley and therefore has poor radio communications for emergency personnel. He said that one way of addressing this dead spot is the installation of an antenna so that information from the field can be relayed back to Headquarters. He said that a temporary mobile antenna has been installed at the Hoyt Street Pump Station for the past month as a test to see if it would be effective in addressing the communications gap. He said that the test has been very effective because the previous conditions were that the handheld units in the field could receive but not transmit back to headquarters. With the experimental antenna at the Hoyt Street Pump Station, communications from the handheld units to headquarters is acceptable. Mr. McEwan said that the main working components of the relay antenna will be located within the pump station building. The antenna will be affixed to the back of the building and will be a total of approximately 25 feet tall measured from ground level.

The Commission members discussed the proposed installation of an emergency antenna at the Hoyt Street Pump Station. The following motion was made: That the Commission approve the request as submitted. The motion was made by Mrs. Cameron, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

Modification of Special Permit Application #202, UCBC Bakery & Cafe, 980 Boston Post Road, CBD Zone.

Request to modify previously approved hours of operation, and request for a liquor license.

Commission members reviewed the January 3, 2012 letter from R. David Genovese of Baywater Properties, the landlord of 980 Boston Post Road. When the original bagel facility was approved at this location, the hours of operation were limited to those which were originally proposed and there was a limit on the type of cooking equipment and therefore there was no need for special odor control facilities. The current operators of UCBC wish to extend the hours of operation so they that can be open in the evenings and expand the menu offerings. They also plan to acquire a restaurant beer and wine license (which the bagel shop had never proposed). Commission members noted that the menu offerings are limited due to the types of cooking equipment. If the cooking equipment and/or menu offerings change to include frying or grilling or other types of operations which could generate odor, the exhaust system from the kitchen area will need to be substantially upgraded so

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there will not be an odor problem noticeable to any other occupants in the area. The Commission members discussed the requested modifications.

The following motion was made: That the requested expansion of office hours and request for a beer and wine license are approved with the understanding that the menu offerings will be expanded only in accordance with the submitted request and no change is made in the cooking equipment and no odors from the cooking operations are allowed to be emitted into the surroundings. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved.

Chairman Conze then read the following agenda item:

Modification of Special Permit Application #248-A, Estia's American/Ole Mole, 1020 Boston Post Road, CBD Zone.

Request for the establishment of a new restaurant in the space now occupied by Ole Mole, including a request for modified hours, and live entertainment.

Commission members reviewed the letter dated February 1, 2012 from R. David Genovese, Manager of Baywater Post Road Associates II, LLC, which is the landlord at 1020 Boston Post Road. The operators of the replacement restaurant propose to expand the hours of operation to include breakfast service. They also propose to change the layout of the patio furniture and to occasionally allow live entertainment. Mr. Genovese explained that the existing venting system that was installed for Ole Mole's kitchen has worked wonderfully and there is no need for any additional odor control system. He said that it is a water wash odor control system and they continue to work closely with the Health Department to make sure that it operates properly.

Mr. Hutchison said that he had no concerns about the change in hours of operation but he was concerned about the live entertainment. Mr. Genovese said that the operators wish to occasionally have acoustical guitars or small groups of performers within the restaurant building. He said that if a noise problem is created, he as the landlord would want the Commission to rescind the permission to have entertainment. Mr. Spain questioned what criteria or standards should be utilized to make a judgment of whether there is an issue. Mr. Genovese said that noise control was incorporated into the design and construction of the building and he did not anticipate a problem with the occasional entertainment that might be provided.

Colin Ambrose, the proposed proprietor of Estia's American, said that there is no plan to have a nightclub operation or a routine entertainment to attract customers. He said that as a restaurant operator he is occasionally approached by community groups or organizations who wish to have a fund raiser by providing local singers or performers. He said that it would not be a routine part of the business operation to provide such entertainment but he does want the ability to accommodate community groups. In response to other questions, Mr. Ambrose said that he has noted that there is ample parking available in the nearby municipal parking lot during the morning and evening hours. At lunchtime, the parking situation is tight, but that is when many of his patrons would be walking to the restaurant from the nearby businesses.

Mr. Conze said that the municipal parking area and the private parking lots in the area are generally used by everyone and the owners cannot get territorial about their parking spaces because it will only lead to problems for all of the business operations. Mr. Ambrose said that he knows about the

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parking situation and will make arrangements for his employees to park off-site rather than in the parking spaces nearest the business. Mr. Genovese said that the nearby municipal parking spaces are usually available for patrons but sometimes there is a problem with the long-term need for parking spaces for employees within the businesses.

The following motion was made: That the Commission approve the requested modification with respect to the hours of operation and allow the occasional provision of entertainment within the restaurant building. No entertainment will be provided on the patio or outside of the building. The motion was made by Mr. Hutchison, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze read the following agenda item:

Site Plan Application #280, Special Permit #268, Baywater 745 BPR, LLC, 745 Boston Post Road, DB-1 Zone.

Request to clarify the parking approval aspect of the Adopted Resolution; review and action upon the proposed combined business and medical office use of the first floor, and an informal discussion regarding possible amendment of Section 585c of the Darien Zoning Regulations.

Attorney Robert Maslan explained that there are three issues that need to be clarified or resolved: the parking designation; the proposed business tenant; and the building coverage issue. With respect to the parking, Mr. Maslan said that the Commission Resolution referred to approving the parking under the joint parking regulations and it also indicated that the proposed garage spaces will be limited to use by the residential tenants. Although this is everyone's intention, the joint parking regulations do not allow for the designation of parking spaces for a particular tenant. He therefore asks that the Commission approve the parking under the Special Findings provisions of the Regulations indicating that there appears to be enough parking spaces for the combination of the uses. This will allow the garage spaces to be limited only for use by the residential tenants.

With respect to the proposed office uses on the ground floor, Attorney Maslan explained that they propose to rent 1711 square feet to a business professional and the remainder of the first floor space to a medical practice that would have a maximum of 3 physicians and a maximum of 6 staff members. The employees of the offices would park across the street at the 10 parking spaces reserved by easement that are located at 722 Boston Post Road. Patrons of the business office uses will park on the site.

Attorney Maslan explained that the building coverage is a concern because the original designs and plans failed to account for all of the garages in the building coverage calculations. Even utilizing the Incentive Provisions within the Regulations they would be allowed to have 31.25% building coverage. The plans submitted to the Commission actually indicate 35.4% building coverage. Attorney Maslan suggested that one way to address this would be to revise the definitions so that one story, unfinished storage or parking buildings would count towards less of building coverage than multi story, finished or occupied space.

Mr. Hutchison said that a simpler solution would be better because Mr. Maslan's original proposal seems rather complicated. Mr. Spain noted that changing the definition and changing the Regulations affects other properties within the zone, and is less desirable than other possible solutions that would be less far reaching. Mr. Maslan said that another way to address the necessary

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change would be to modify the incentive allowance for special projects, such as this. Mr. Spain said that the issue is somewhat complex and needs more study before the Commission takes action. Mr. Maslan indicated that he wanted to bring this matter to the Commission's attention so that all parties can work together to formulate a modification of the Regulations that would be achievable. He did ask that the Commission make a finding regarding the parking issue and the tenant.

The following motion was made: That the Planning & Zoning Commission clarify the resolution approval to indicate that the parking determination is based on the special findings that the on-site spaces and those that are reserved for use across the street with respect to this property appear to be sufficient and that the Commission also approve the proposed business office and medical office uses as proposed. The motion was made by Mrs. Cameron, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze then read the following agenda item:

Amendment of Business Site Plan #164-B, Normandy Darien Holdings, Darien Green, 320-330 Boston Post Road, OB Zone. Request to allow a professional use in Darien Green--an optometrist who specializes in developmental therapy for vision issues.

No one was present to explain the request and the submitted information was incomplete. The matter will be discussed at a future meeting when more information and detail is provided.

Informal discussion regarding Amendment of Business Site Plan #136-C/Special Permit, Dan Dolcetti, 2 Squab Lane, CBD Zone.

Discussion of request for a law office on the 1st and 2nd floor of the existing building.
Request for extension of time to commence redevelopment project (no written request made).

Mr. Hutchison left the meeting and did not participate in the application in order to avoid any perception of a conflict of interest.

Project owner Dan Dolcetti plans to lease the space to son, Dan, who is an attorney. Mr. Ginsberg said that the proposed office use of the first floor of a building in the CBD zone requires a Special Permit. There is no exception in the Statutes or the Regulations for a temporary use. Mr. Dolcetti said that the question of how long the use would be in effect is a good one because there is no determinable answer because no long term tenant has been found for the proposed new building. The existing building will not be removed until a new tenant is found for the proposed building. Mr. Dolcetti said that there are currently two second-floor tenants within the space at this time. He said that the proposed first floor use would be reception waiting area, a conference room, a library all associated with the office use.

Mr. Spain said that the State Statutes are clear that a Public Hearing is required before a Special Permit can be considered. Mr. Dolcetti said that this is only a temporary use and that the building would be coming down at some point. Mrs. Cameron noted that even though it is temporary, a formal application must be submitted and a Public Hearing must be conducted before the Commission can authorize a Special Permit use. Mr. Ginsberg said that if the application is submitted immediately, he can place this matter on the Planning & Zoning Commission agenda for

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February 28, 2012. The applicant will be responsible for providing notification to neighboring property owners in accordance with the usual requirements outlined in the Regulations.

Chairman Conze read the following agenda item:

*Discussion, deliberation and possible decision on the following six closed public hearing matters:
(All hearings were closed on January 24, 2012 and have a decision deadline of March 29, 2012):*

Special Permit Application #60-J, Country Club of Darien, 300 Mansfield Avenue. Proposing to clear an existing area in the southwest corner of the Club property, and use it for the growing of turf and trees for future transplanting onto the golf course, and perform related site activities.

Mr. Hutchison returned to the meeting.

The Commission members discussed the draft resolution that would grant conditional approval to the proposed on-site plant nursery area on the western portion of the Club property. The following motion was made: That the Commission adopt the following resolution to grant the application subject to the stipulations as noted. The motion was made by Mrs. Cameron and seconded by Mr. Spain. All voted in favor of the motion except for Mr. Cunningham, who abstained. The motion passed by a vote of 4-0-1. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2012**

Application Number: Special Permit Application #60-J

Assessor's Map #5 Lot #40

Name and Address of Property Owner: Country Club of Darien, Inc.
And Applicant: 300 Mansfield Avenue
Darien, CT 06820

Name and Address of Tim O'Neill
Applicant's Representative: c/o Country Club of Darien
300 Mansfield Avenue
Darien, CT 06820

Activity Being Applied For: Proposing to clear an existing area in the southwest corner of the Club property, and use it for the growing of turf and trees for future transplanting onto the golf course, and perform related site activities.

Property Location: The subject property is located on the east side of Mansfield Avenue, approximately 1,250 feet south of its intersection with Middlesex Road.

Zone: R-2

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Date of Public Hearing: January 24, 2012

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: January 13 & 20, 2012

Newspaper: Darien News

Date of Action: February 7, 2012

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
February 17, 2012

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 1000, and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted photographs, drawings and sketches, and the statements of the applicant's representative, whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to clear an existing area of about 38,000 square feet in size in the southwest corner of the Country Club of Darien property, and use it for the growing of turf and trees for future transplanting onto the golf course, and perform related site activities. The types of trees to be planted in this area may include, but will not be limited to, arbor vitae, spruce and holly.
2. During the public hearing, the applicant's representative presented evidence that in 1983, this area had few, if any trees. Photographs of the existing area were presented, showing many of the plantings are now overgrown and have vines on them. This proposal will result in the area becoming more "formalized".
3. As part of this application, some trees in this area are proposed to remain. This includes eleven (11) trees in all. These are shown in photos numbered 21-31 in the submitted application materials, described in the application narrative and shown on submitted sketches. These eleven trees include six black cherry, two pin oak, one ash, one red cedar, and one holly. It is likely that all of the other trees/brush in this 38,000 square foot area will be removed.
4. The applicant's representative noted at the public hearing that the growing of trees and turf on-site may help reduce the number of truck deliveries to the Club.

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5. No change in membership or general activities at the club is proposed as part of this application. Any changes to the nature of on-site uses would require an amendment of the existing Special Permit (review and approval by the Planning and Zoning Commission).
6. At the public hearing, one of the neighbors noted their concern with the proposal, including the possibility of equipment being stored in this area. In response to that concern, the applicant's representative noted that no equipment will be stored in that area.
7. The nature of the proposed use is such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
8. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
9. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
10. The location and size of the use conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.

NOW THEREFORE BE IT RESOLVED that Special Permit Application #60-J is hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Activity shall be in accordance with the drawings/sketches and submitted information entitled: Planning & Zoning Submission—2 page written document.
- B. Since there is no new impervious surface proposed as part of this application, and because the area slopes into the rest of the club property rather than down toward the neighbors, the Commission hereby waives the requirement for Stormwater Management per Section 880 of the Darien Zoning Regulations.
- C. Per the applicant's representations at the public hearing, there shall be no filling or regrading as part of this project. The only installation shall be for a new irrigation system. There shall be no lighting in the proposed tree and turf storage area.
- D. No equipment shall be stored in this area. All planting and transplanting work in this area shall be done between 6 a.m. and 8 p.m.
- E. No trees, shrubs or turf grown within this area shall be sold or taken off-premises. All materials grown in this area are solely for use by the Country Club of Darien on the subject property.
- F. During construction, the applicant shall utilize any sediment and erosion control measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the project and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to

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commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- G. As noted by the applicant, this application proposes no change or increase in the uses or membership in the Country Club of Darien. Any such proposals would require an amendment of the Club's Special Permit, and action by the Planning and Zoning Commission.
- H. The granting of this Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. At the public hearing, a request was made by the applicant's representative for a two-year approval, giving them additional time to implement the project. The Commission hereby grants this two-year approval. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within two (2) years of this action (February 7, 2014).

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

Chairman Conze read the following agenda item:

Business Site Plan #275-A/Special Permit, Phil's Grill, 340 Heights Road. Proposing to construct an addition to the existing restaurant and to perform related site development activities, and to establish additional outdoor dining, both within the Noroton Heights Shopping Center.

Commission members discussed the draft resolution and noted that the comments of the Fire Marshal should be incorporated. All agreed. The following motion was made: That the Commission adopt the revised resolution to approve the modifications subject to the conditions and stipulations as noted. The motion was made by Mr. Cunningham, seconded by Mrs. Cameron and unanimously approved.

The resolution reads as follows:

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ADOPTED RESOLUTION
February 7, 2012

Application Number: Business Site Plan #275-A/Special Permit
Noroton Heights Shopping Center (tenant: Phil's Grill)

Street Address: 340 Heights Road
Assessor's Map #75 Lot #22 - #24

Name and Address of Applicant & Applicant's Representative: Wilder G. Gleason
Gleason & Associates, LLC
455 Boston Post Road, Suite 201
Darien, CT 06820

Name and Address of Lessee: Phil's Grill
c/o Phil Santomassi
25 Salisbury Road
Darien, CT 06820

Name and Address of Property Owner: Noroton Heights Shopping Center
Darien, CT 06820

Activity Being Applied For: Proposing to construct an addition to the existing restaurant and to perform related site development activities, and to establish additional outdoor dining, within the Noroton Heights Shopping Center.

Property Location: The subject property is located on the north side of Heights Road approximately 250 feet east of its intersection with Hollow Tree Ridge Road.

Zone: DC

Date of Public Hearing: January 24, 2012

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: January 13 & 20, 2012 Newspaper: Darien News

Date of Action: February 7, 2012 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action: February 17, 2012 Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

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- the proposed use and activities must comply with all provisions of Sections 630, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to construct an addition to the existing restaurant (about 115 square feet in size) and to perform related site development activities, and to establish additional outdoor dining, to increase the number of indoor seats, all within the Noroton Heights Shopping Center. A restaurant with at least 800 square feet of indoor floor space devoted to customer seating area is a Principal Use requiring a Special Permit, per Section 634b of the Darien Zoning Regulations. The submitted plans show the seating which now exists both indoors and outdoors, as well as the proposed one-story addition to the building and the outdoor tables and chairs directly under the existing roof of the building. There will be seven additional seats indoors created as part of this proposal.
2. As part of this application, a new outdoor seating/dining area would be created in the front of the building (facing Heights Road), directly adjacent to the building. This outdoor seating area will contain four tables and eight chairs. This area will be under the existing roof, and will have a fence or other enclosure around it, as required by the State Liquor Commission. Pedestrian access from the parking area to the entrance door will not be encumbered by the seating or fence.
3. The submitted plans were referred to the Fire Marshal for comment. On December 30, 2011, Fire Marshal noted that he had no issues or concerns with the submitted application.
4. The Architectural Review Board (ARB) reviewed and approved this project at its December 13, 2011 meeting. That approval is hereby incorporated by reference.
5. The applicant represented that there are no other changes to the restaurant, which has been operational at this location for less than a year. The Commission is familiar with the current operations and its surroundings in the Noroton Heights Shopping Center.
6. As part of the submitted application, the applicant performed an informal parking study of the on-site parking, which reflected sufficient parking available for the proposed restaurant. Section 905 of the Zoning Regulations allows the Commission to consider joint parking for the various businesses on the subject property. The restaurant has been open for over six months, with no parking problems. It was demonstrated that sufficient parking is available around and near the restaurant. The Commission hereby finds that the proposed capacity of parking meets the intent of the requirements.

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7. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
8. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
9. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
10. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or increase unsafe traffic conditions between adjoining developments and the district as a whole.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #275-A/Special Permit is hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission hereby approves the following plans received in the Planning and Zoning Department entitled:

- Proposed Changes to Phil's Grill, dwg by S. Jones 12.04.11. (one plan showing elevations and the other plan showing the interior floor plans and the proposed new exterior seating under the existing roof).

Final details of the interior floor plan may be modified subject to final approval by the Fire Marshal, Health Director, Planning & Zoning Director, and Building Official. Any final floor plans must be consistent with representations made at the public hearing by the applicant and be consistent with this Resolution.

- B. Due to the scope, nature, and/or amount of work proposed within the application, and the fact that there is no new impervious surface created as part of this proposal, the Commission hereby waives the requirement for Stormwater Management in Section 880 of the Darien Zoning Regulations.
- C. The Commission hereby waives the requirement for a formal off-street loading space under Section 909 of the Darien Zoning Regulations. As noted in the Commission's previous approval of Business Site Plan #275/Special Permit for this restaurant, all loading and unloading shall be scheduled and coordinated so as to not interfere with arrival or dismissal of the scheduled classes in Elements, an adjacent yoga facility.
- D. Other than noted herein, there are no changes requested by the applicant to the other aspects of the restaurant previously approved by the Commission in Business Site Plan #275/Special Permit. This would include, but not be limited to: No change to the previously approved hours

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of operation; that the applicant is still responsible for odor control; deliveries; and use of the nearby dumpster area, which shall be neatly maintained.

- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Health Department and the Darien Fire Marshal.
- G. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (February 7, 2013). This may be extended as per Section 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Subdivision Application #612, Estate of Mary C. Ewing, 203 Long Neck Point Road.
Proposing to subdivide the 203 Long Neck Point Road property into two 1-acre lots.

Mr. Hutchison and Mrs. Cameron had several modifications and clarifications which were discussed and agreed to by all Commission members. The following motion was made: That the Commission adopt the following revised resolution to approve the proposed subdivision subject to the revised conditions and stipulations as noted. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

The resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2012**

Application Number: Subdivision Application #612

Street Address: 203 Long Neck Point Road
Assessor's Map #61 Lot #9

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Name and Address of
Property Owner: Estate of Mary C. Ewing
c/o William Ewing
296 White Oak Shade Road
New Canaan, CT 06840

Name and Address of Applicant &
Applicant's Representative: Amy Zabetakis
Rucci Law Group, LLC
19 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposing to subdivide the 203 Long Neck Point Road property into two 1-acre lots.

Subject Property: The subject property is located on the east side of Long Neck Point Road, approximately 1,200 feet south of its southernmost intersection with Pear Tree Point Road.

Zone: R-1

Date of Public Hearing: January 24, 2012

Time and Place: 8:00 p.m. Room 206 Darien Town Hall

Publication of Hearing Notices
Dates: January 13 & 20, 2012

Newspaper: Darien News

Date of Action: February 7, 2012

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
February 17, 2012

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Section 400 of the Darien Zoning Regulations and all applicable sections of the Subdivision Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted subdivision plan, and the testimony contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

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1. A related application was submitted for a permit to establish a rear lot as part of a “free cut” (Administrative Permit 339 #1-2012). On January 24, 2012 the Commission approved the layout of the proposed free cut with respect to the two 25 foot wide access strips of land that lead from the street to the proposed rear lot.
2. The applicant proposes to subdivide the front parcel, the 203 Long Neck Point Road property, into two 1-acre lots. As noted on the submitted subdivision plan, the two lots are proposed to be 1.000 acres each and are proposed to tie into the public water and sewer available in Long Neck Point Road. Since this is a two-lot subdivision, it does not involve more than three times the minimum lot size required in the R-1 zone, and there is no open space requirement.
3. There are no inland wetlands on the subject property.
4. A plan was submitted by McChord Engineering showing the feasibility of proposed residences and associated improvements on each of the two lots. This plan shows houses which could be built upon each of these lots if they were approved.
5. A letter was received from neighbors stating their concerns about the number of driveways possibly to be created as part of this subdivision application.
6. As noted at the public hearing, the proposed residences and other improvements shown on the submitted plans do not represent proposed construction and are not the specific structures to be built. The Commission is NOT approving the construction of any residences herein, but rather, is solely approving the subdivision of the existing property into two lots. The decision on whether further review and action by the Planning & Zoning Commission is required for construction of these residences will ultimately depend upon the specific development proposed for each lot.

NOW THEREFORE BE IT RESOLVED that Subdivision Application #612 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The subdivision shall be in accordance with the following plan submitted to and reviewed by the Commission:
 - Zoning Location Survey and Original Survey for two lot Subdivision #203 Long Neck Point Road prepared for Mary C. Ewing, by William W. Seymour & Associates, scale 1”=20’, dated November 3, 2011.While the plans prepared by McChord Engineering Associates, Inc. were submitted and reviewed by the Commission, those plans are not being approved for the actual construction of buildings, since the only application being made herein is for the subdivision approval, which is shown on the William W. Seymour & Associates plan. As noted above, there is no specific development proposal being made as part of this application, and none is being approved herein.
- B. No site work is proposed as part of this application. All utilities shall be installed underground.

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- C. Since there is no new road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.
- D. The Commission hereby requires that as part of the development application for either of these two lots, that further details be provided for staff review on the specific location and grades of any proposed driveways. This shall include details on the driveway sight lines verified by a professional engineer. No plantings or other possible obstructions shall be installed which could impede said sight lines. While no decision on the exact location or number of driveways is being made herein, the Commission strongly desires that there be one curb cut/street opening per lot. The potential for two curb cuts to become five curb cuts in such a short distance on Long Neck Point Road warrants scrutiny.
- E. Prior to filing a mylar in the Darien Land Records, the applicant/property owner will need to remove the existing residence and pool with associated concrete patio (because they straddle the proposed new lot line). That will require a Demolition Permit from the Darien Building Department. New street addresses and lot numbers shall be obtained from the Darien Assessor and put onto the mylar prior to being given to the Planning & Zoning Director. Once that has been accomplished, the Planning & Zoning Director shall review the mylar to confirm it is in compliance with this resolution. If so, the map shall be signed by the Chairman or Secretary and returned to the applicant for filing in the Darien Land Records. The timing of the filing must comply with Section 8-25 of the Connecticut General Statutes. Because there is a need for a Demolition Permit, and the fact that the current Estate that owns the property may wish to sell the property, the Commission hereby grants the first of two possible 90-day extensions of time to file the mylar in the Darien Land Records.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. This approval of this subdivision does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This would include the aforementioned Demolition Permit to demolish the existing residence at 203 Long Neck Point Road. A Street Opening Permit(s) will be required for any new driveway(s), and a Sewer Connection permit will be needed from Sewer Services to hook up any new residences to the public sewer which now exists in Long Neck Point Road.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final plan by the Planning & Zoning Chairman.

Chairman Conze read the following agenda item:

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Special Permit Application #271, David Flagg, 90 Holmes Avenue. Proposing to establish a home-based business teaching children's arts and crafts classes.

The draft resolution would deny the application. Mrs. Cameron said that she is very concerned about the drop off and pick up of the young children and the need to manuvre the vehicles in the somewhat restricted area. She said that each time a class begins or ends, six vehicles would be going into and six vehicles would be coming out of the site. Mr Conze said that the intensity of the use is a concern in the residential neighborhood. He said that instruction of individual students is allowed as a matter of right but having classes is more intense than what would normally be permitted. Mr. Spain said that the use would not just be an occasional group of students but it would be routine and therefore seemed inappropriate for this residential neighborhood.

The following motion was made: That the Commission adopt the following resolution which will deny the application. The motion was made by Mrs. Cameron and seconded by Mr. Hutchison. All voted in favor of the motion and the resolution was unanimously adopted.

The resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2012**

Application Number: Special Permit Application #271

Assessor's Map #48 Lot #120

Name and Address of Applicant: David Flagg
and Property Owner: 90 Holmes Avenue
Darien, CT 06820

Activity Being Applied For: Proposing to establish a home-based business teaching children's arts and crafts classes.

Property Location: The subject property is on the west side of Holmes Avenue approximately 380 feet south of its intersection with West Avenue.

Zone: R-1/5

Date of Public Hearing: January 24, 2012

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: January 13 & 20, 2012

Newspaper: Darien News

Date of Action: February 7, 2012

Action: DENIED

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Scheduled Date of Publication of
Action: February 17, 2012

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 405a and 1005 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is for the establishment of a home occupation in the Flagg residence at 90 Holmes Avenue. This business will be to establish a home-based business teaching children's arts and crafts classes. Mrs. Flagg proposes to run the class, and there will be one employee coming to the site. This is in accordance with the limitation of Section 405 a 1 of the Darien Zoning Regulations.
2. There are proposed to be no noticeable changes to the exterior of the residence or the surrounding grounds. There are no changes proposed to the existing residence. This is in accordance with the requirements of Section 405 a 2 and 405 a 9.
3. Mr. Flagg explained within the submitted application materials and at the public hearing that there will be a maximum of six students in a class. In response to questions about the possibility of six vehicles arriving on his property at one time to either drop off or pick up children, he noted that the class start time could be staggered to avoid multiple vehicles arriving at the property at one time.
4. The area of the residence to be used for the home occupation is an 11' x 15' room which is less than 10% of the area of the living space of the residence. This is accordance with Sections 405 a 4 and 405 a 5.
5. The applicant submitted photographs of the subject property showing the driveway, parking area, and associated turn-around area. There are no plans to modify the existing driveway, which has a stone wall and split-rail fence along one side of the driveway, and a row of trees with stockade fence behind them. Commission members noted that this is a "rear lot", which abuts the Noroton River and is close to the Metro-North train tracks.
6. At the public hearing, neighbors on Holmes Avenue submitted a petition against the application. They noted their concerns with traffic and parking, as well as the imposition of this home

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occupation in what is now exclusively a residential area. They explained that the driveway is too narrow in some spots for two vehicles to safely pass.

7. In order to grant this application, the Commission must also find that the home occupation use, as proposed, complies with the provisions of Section 1005i of the Regulations. In particular, the Commission must find that the use will not constitute a fire or safety hazard to the neighborhood and will not adversely affect neighboring property values and will not constitute a nuisance or otherwise be detrimental to the neighbors because of excessive traffic, excessive noise, odor or other circumstance.
8. In this case, the Commission has concerns about parking and traffic. The Commission believes that it will be difficult to arrange a safe drop off and pick up given the configuration of the driveway. The Commission has concern with potential congestion in narrow tolerance for turning around after drop-offs, and clusters of cars coming before and after sessions.
9. Section 405a6 of the Darien Zoning Regulations requires that "...any need for parking generated by the conduct of such home occupation shall be met off the street..." The Commission has noted its concerns with multiple vehicles arriving at the same time for a class, and then maneuvering on-site.
10. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
 - a) For Special Permit Uses, under Section 1005 of the Darien Zoning Regulations, the Commission "...may authorize the issuance of a Special Permit after considering the health, safety and welfare of the public, in general, and the immediate neighborhood, in particular, and provided the Commission shall make the following findings:" (among others)
 - a. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, shall be such that it shall be in harmony with the appropriate and orderly development of the district in which it is located.
 - b. The location, nature, size, and height of buildings, walls and fences, and the nature and extent of landscaping, screening, lighting and signs shall be such that the use shall not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof..."
 - b) The Commission received testimony at the public hearing from neighbors noting their concern with this proposal.
 - c) During the public hearing, it was noted that the existing driveway is difficult to have vehicles pass one another, and vehicles maneuvering and turning around near the house would be difficult if other vehicles are parked.

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NOW THEREFORE BE IT RESOLVED that Special Permit #271, the request to establish a home-based business teaching children's arts and crafts classes at 90 Holmes Avenue, is hereby denied.

The Commission finds that the holding children's arts and crafts classes on the subject property is not in harmony with the appropriate and orderly development of the district, and such classes would discourage the appropriate use of adjacent land and buildings, and such an operation would create parking and traffic issues and concerns, and thus the Commission cannot grant the Special Permit.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #50-C, Flood Damage Prevention Application #39-C, Land Filling & Regrading Application #271, Steven K. & Lisa B. Eppley, 6 Contentment Island Road.
Proposing to raise (elevate) the existing residence, garage and driveway areas, replace the swimming pool, upgrade the septic system, and perform related site development activities within regulated areas.

The Commission members discussed the draft resolution and the following motion was made: That the Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Cunningham, seconded by Mr. Hutchison and unanimously approved.

The resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2012**

Application Number: Coastal Site Plan Review #50-C
Flood Damage Prevention Application #39-C
Land Filling & Regrading Application #271

Street Address: 6 Contentment Island Road
Assessor's Map #67 Lot #64

Name and Address of Applicant: Steven K & Lisa Eppley
And Property Owner: 6 Contentment Island Road
Darien, CT 06820

Name and Address of: Jeff McDougal
Applicant's Representative: William W. Seymour & Associates
170 Noroton Avenue
Darien, CT 06820

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Activity Being Applied For: Proposing to raise (elevate) the existing residence, garage and driveway areas, replace the swimming pool, upgrade the septic system, and perform related site development activities within regulated areas.

Property Location: The subject property is on the west side of Contentment Island Road approximately 300 feet south of its intersection with Tokeneke Beach Drive.

Zone: R-1

Date of Public Hearing: January 24, 2012

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: January 13 & 20, 2012

Newspaper: Darien News

Date of Action: February 7, 2012

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
February 17, 2012

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 810, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The application is to raise (elevate) the existing residence, garage and driveway areas, construct additions and alterations to the residence, replace the swimming pool, upgrade the septic system, and perform related site development activities within regulated areas. The subject property is .807+/- acres and is served by an on-site septic system and public water supply. The existing house and pool are in the Flood Hazard Zone. The size and location of the house are restricted due to the septic system, which is located between the street and the house. The proposed attached garage will be elevated so that its slab elevation will be at elevation 12.1, which would be above the existing flood zone. On the Flood Insurance Rate Map (FIRM) revised June 18, 2010 the expected flood level in this area is elevation 12 (NAVD 88). As noted by the applicant, one of

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the goals of the application is to have an area on the property where vehicles can be elevated and above the flood hazard zone.

2. Some of the proposed work will involve filling and regrading around the proposed structure so that the structure will no longer be in the Flood Zone. The work is also within the 1,000 foot regulated area established by the Coastal Area Management Program. At the public hearing, it was represented that the portion of the driveway that is currently gravel will remain gravel.
3. The applicants applied to the Zoning Board of Appeals (ZBA) as part of this project. The ZBA approved that application on January 18, 2012 as part of Calendar #54-2011. That approval is hereby incorporated by reference.
4. According to information submitted by soil scientist Thomas Pietras, there are no inland wetlands on the subject property. However, tidal wetlands and a section of Scott's Cove (tidal waters) are present on the property.
5. The State of Connecticut DEEP sent an email dated January 23, 2012 regarding the subject application. In that e-mail, they noted that, with respect to the Connecticut Coastal Management Act, they "...find no inconsistencies with the proposal. However, the proposed slope stabilization will need prior authorization from OLISP's Permitting and Enforcement section." In a subsequent e-mail also dated January 23rd, they note that the public hearing on this matter can be closed as long as the applicant has been advised. During the public hearing, the applicant noted that the shoreline stabilization, which is part of this plan, was submitted to the Connecticut Department of Energy and Environmental Protection (DEEP). That application is still pending. He said that there is an existing dock on the property which has been permitted by the town and DEEP.
6. The house will be elevated to be above the expected flood level. To accomplish this, they will be removing part of the house, but the first floor framing and floor will remain. The height of the foundation will be increased. As the house is reconstructed, a second floor will be added. A new retaining wall will be built outside the perimeter of the house to create a plateau so that the house will no longer be touched by flood waters. A small entry addition will be built at the front of the house to provide access into the elevated house.
7. The existing house has three bedrooms and the proposed house will also have three bedrooms. The new septic system will be adequate for a three bedroom house but is not large enough for a four bedroom house.
8. Mr. McDougal said that the first floor level of the house will be raised by approximately four feet to be at elevation 14. They are also raising the grade of the garage and raising the driveway as it proceeds from the street to the garage. This design has been coordinated with the septic system design so that effluent will flow into the underground leaching fields in the front yard. Retaining walls will be built around the perimeter of the house and the pool so that those will be built on a pedestal with minimized flooding. Some steps from the new elevation of the pool would need to be installed to get down the existing grade at the outside of the retaining wall. He said that the house currently has a crawl space and that crawl space would need to remain, but would be higher.

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9. The applicant noted at the public hearing that the work at the water's edge will utilize hand excavation rather than large machinery. He said that the permits for work at the water's edge are currently pending with the DEEP. Part of that work will involve removal of the Phragmites, which is an invasive plant. They will be salvaging the Spartina and High Tide Brush and replanting the area with similar, appropriate vegetation.
10. Applicant Jeff McDougal said that geo-thermal wells will be used on the property. They will be placed on the north side of the house but the actual location will depend on site specific conditions. The plans had initially shown the geo-thermal wells to be on the south side of the property and thus the plans will need to be revised. They will also revise the plans to reflect the condition of the Zoning Board of Appeals variance that the swimming pool equipment pad be relocated.
11. A cistern system will be used to collect storm water runoff from the roof of the house. Currently, all of the storm water from the impervious surfaces flows directly to the shoreline and into Scott's Cove. The new gutters and leaders on the house will direct some of that water into the cistern; the other water will be dispersed in the landscape areas. Mr. McDougal said that most of the new driveway will be gravel, but the area near the garage will be paved.
12. The application has been reviewed by the Commission and as required to be modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
13. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
14. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
15. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
16. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
17. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #50-C, Flood Damage Prevention Application #39-C, and Land Filling & Regrading Application #271 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other site development activity shall be in accordance with the following plans submitted to the Commission, as required to be revised herein:
 - Topographic Survey and Zoning Location Survey prepared depicting proposed conditions prepared for Steven K. Eppeley Lisa B. Eppeley 6 Contentment Island Road, by

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William W. Seymour & Associates, scale 1"=20', dated October 1, 2010 and last revised November 28, 2011.

- Site Plan prepared for Eppley Residence #6 Contentment Island Road, by LBM Engineering, LLC, scale 1"=20', dated December 1, 2011.
- Additions & Alterations to: The Eppley Residence 6 Contentment Island Road by ERI Building & Design, LLC, received Dec 16, 2011 (this shows the elevations and floor plans—the Commission acknowledges that the actual floor plans may be different. If any changes to the floor plans are made, Darien Health Department review and approval may be required).

Revised plans are required to clarify which parts of the driveway will be gravel and which parts will be pavement, to show the relocation of the pool equipment per the Zoning Board of Appeals approval, as well as the relocation of the proposed geo-thermal well area. All plans and drawings shall be revised to be coordinated and consistent with this approval and with each other.

- B. During the filling, regrading, and site work, the applicant shall utilize the sediment and erosion controls illustrated on the Site Drainage Plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection measures, as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- C. Due to the minor nature of this project, the Commission hereby waives the requirement for a performance bond.
- D. The excavation work to provide slope stabilization at the shore and eradication of phragmites must be done by hand and cannot be performed until a permit from the DEEP is obtained. The applicant shall provide a copy of that approval for the Commission's record.
- E. The installation of the replacement septic system shall be one of the last aspects of site work in order to avoid compaction of the septic system area.
- F. The Zoning and Building Permits for the foundation only for the proposed additions to the residence shall be issued upon proper application. Once the foundation has been installed and the regrading around the foundation has been accomplished, an as-built survey illustrating the location and elevation of the foundation and the regrading around the foundation shall be submitted to verify that no part of the house or foundation are within the flood hazard zone. Only then can the Zoning and Building Permits be obtained for the house above the foundation level. The applicant is responsible for obtaining the Letter of Map Revision (LOMR) or similar approval from FEMA. The applicant shall provide a copy

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of this approval to the Commission for the file prior to the use of, or request for the issuance of a Certificate of Occupancy for the proposed residence.

- G. The applicant shall install the cistern as shown on the submitted Site Plan (in Condition A, above). The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies). If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible.
- H. Once the project is complete, and prior to February 7, 2014, the applicant shall certify in writing and/or photographs, and with an 'as-built' survey map that all work has been properly completed in accordance with the approved plans. This shall include written certification by the project's professional engineer that the cistern has been installed according to the approved plans, and that the construction complies with the Flood Damage Prevention Regulations.
- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, final approval of the septic system from the Darien Health Department, and approval of slope stabilization from the State of Connecticut DEEP.
- K. At the public hearing, the applicant noted that project implementation can not start until they have received final approval from the Town and the Connecticut DEEP, and the project will take quite a while to complete. He asked that the Commission to grant the permit for a two year time period (rather than the typical one year approval) to eliminate the need to come back to the Commission for an extension after the first year. The Commission agrees that such a two-year approval would be appropriate. Thus, this permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within two (2) years of this action (February 7, 2014).

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the start of any filling or regrading work, or this approval shall become null and void.

Chairman Conze read the following agenda item:

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Coastal Site Plan Review #269, Flood Damage Prevention Application #305, Land Filling & Regrading Application #269, Francis & Catherine Gallagher, 32 Pasture Lane. Proposing to raze the existing residence and detached garage, and construct a new single-family residence with attached garage, and perform related site development activities within regulated areas.

The draft resolution was discussed. The Commission members noted that a storm water maintenance plan needs to be submitted and reviewed and acted upon by the Director of Planning & Zoning. The following motion was made: That the Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Cunningham, seconded by Mr. Spain and unanimously approved.

The resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2012**

Application Number: Coastal Site Plan Review #269
Flood Damage Prevention Application #305
Land Filling & Regrading Application #269

Street Address: 32 Pasture Lane
Assessor's Map #51 Lot #57-A

Name and Address of Applicant: Francis & Catherine Gallagher
And Property Owner: 19 Academy Street
Darien, CT 06820

Name and Address of: William Hennessey, Jr. Esq.
Applicant's Representative: Sandak Hennessey & Greco, LLP
707 Summer Street
Stamford, CT 06901-1026

Activity Being Applied For: Proposing to raze the existing residence and detached garage, and construct a new single-family residence with attached garage, and perform related site development activities within regulated areas.

Property Location: The subject property is on the southeast side of Pasture Lane approximately 2,300 feet east of its intersection with Nearwater Lane.

Zone: R-1

Date of Public Hearing: January 24, 2012

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

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Dates: January 13 & 20, 2012

Newspaper: Darien News

Date of Action: February 7, 2012

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
February 17, 2012

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 810, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The application is to raze the existing residence and detached garage, and construct a new single-family residence with attached garage, and above-ground swimming pool, and perform related site development activities within regulated areas. The subject property is a rear lot, which fronts on the Darien River. Part of the plan will be to eliminate the on-site septic system and connect to the existing sanitary sewer in the street. The proposed new residence with attached garage will be served by public water and sewer.
2. Some of the proposed work will involve filling and regrading around the proposed structure so that the structure will no longer be in the Flood Zone. The work proposed as part of this application is also within the 1,000 foot regulated area established by the Coastal Area Management Program.
3. The submitted plans and application materials had been referred to the State of Connecticut DEEP by Planning & Zoning Department staff. State DEEP responded with an email dated January 19, 2012, indicating that they found that the proposed plans were not inconsistent with the Coastal Area Management Policies.
4. The plan is to take down the house to the foundation level, fill and regrade around the house to raise the ground level so that the present walk-out basement will become a fully enclosed basement, and then rebuild the house on this new platform that is above the expected flood level. Approximately 420 cubic yards of fill will be needed around the back side of the house (between the house and the Darien River). The average depth of this fill will be four feet. The existing seawall will be unchanged and the new fill will be graded down to the top of the seawall.

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5. The existing house is located in the Flood Hazard Zone and the extensive renovations proposed by the Gallaghers would be “substantial,” as defined by the Regulations. Thus, the result of this substantial renovation would require that the entire house be brought into compliance with the Flood Damage Prevention Regulations. In this case, the proposed regrading will result in the house location no longer being within the flood hazard area.
6. The first floor of the proposed residence will be at about elevation 14 (which is above the expected flood level) and the two primary levels of living space will be the first floor and the new second floor. As part of this application, the heating and electrical systems, which are now located in the basement, which is below the expected flood level, will be placed at or above the flood elevation. The fill on the water side of the house will raise the ground level to approximately 13.5 feet; thus, the entire house area will be on ground that is above the expected flood zone.
7. The submitted plan reflects the fact that many of the large trees on the site are not healthy and need to be removed. A letter from O’Neill’s Tree Care, a tree expert, documenting the health status of many of the trees was submitted. When these large unhealthy trees are removed, the understory of smaller trees will then be allowed to thrive.
8. As part of this application, proposed underground culvert units are proposed to address stormwater quality. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners and/or tenants of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential stormwater impacts.
9. The application has been reviewed by the Commission and as required to be modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
10. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
11. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
12. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
13. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
14. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

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NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #269, Flood Damage Prevention Application #305, and Land Filling & Regrading Application #269 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other site development activity shall be in accordance with the following plans as submitted to the Commission:
 - Topographic and Zoning Location Survey prepared for Francis Gallagher Catherine Gallagher 32 Pasture Lane, by William W. Seymour & Associates, scale 1"=20', dated October 11, 2011 and last revised January 19, 2012.
 - Site Drainage Plan, Proposed Drainage Plan on Property of Francis & Catherine Gallagher, 32 Pasture Lane by Frangione Engineering, last revised 1/20/12, Sheet S1.
 - Details & Notes, Proposed Drainage Plan on Property of Francis & Catherine Gallagher, 32 Pasture Lane by Frangione Engineering, last revised 1/23/12, Sheet S2.
 - Addition/Renovation for Frank Gallagher Cathy Gallagher, by Goewey & DeMasi AIA Architects, last revised 1/20/2012, 5 pages.
- B. The Zoning and Building Permits for the foundation only for the proposed residence shall be issued upon proper application. Once the foundation has been installed and the regrading around the foundation has been accomplished, an as-built survey illustrating the location and elevation of the foundation and the regrading around the foundation shall be submitted to verify that no part of the house or new foundation are within the flood hazard zone. Only then can the Zoning and Building Permits be obtained for the house above the foundation level. The applicant is responsible for obtaining the Letter of Map Revision (LOMR) or similar approval from FEMA. The applicant shall provide a copy of this approval to the Commission for the file prior to the use of, or request for the issuance of a Certificate of Occupancy for the proposed residence.
- C. During the filling, regrading, and site work, the applicant shall utilize the sediment and erosion controls illustrated on the Site Drainage Plan and Details & Notes Plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection measures, as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. Due to the minor nature of this project, the Commission hereby waives the requirement for a performance bond.
- E. As part of this application a Drainage Maintenance Plan was submitted for the record. This Drainage Maintenance Plan requires the property owner and all subsequent property owners of 32 Pasture Lane to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien

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Land Records by the owner as well, within 60 days of this approval and prior to the start of any filling or regrading work.

- F. The applicant shall install the stormwater management system as shown on the submitted Site Drainage Plan (in Condition A, above). The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies). If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible.
- G. Once the project is complete, and prior to February 7, 2013, the applicant shall certify in writing and/or photographs, and with an 'as-built' survey map that all work has been properly completed in accordance with the approved plans. This shall include written certification by the project's professional engineer that the drainage facilities have been installed according to the approved plans, and that the construction complies with the Flood Damage Prevention Regulations.
- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, approval from the Darien Health Department to abandon the existing septic system, approval from Darien Sewer Services to tie into the existing sanitary sewer system, and a Demolition Permit from the Darien Building Department.
- J. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (February 7, 2013).

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the start of any filling or regrading work, or this approval shall become null and void.

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Chairman Conze read the following agenda item:

Approval of Minutes

January 17, 2012 General Meeting

Several typos, corrections and clarifications were discussed and agreed upon. The following motion was made: That the Commission adopt the revised minutes. The motion was made by Mrs. Cameron and seconded by Mr. Spain. All voted in favor except for Mr. Conze, who abstained because he had not attended the meeting. The minutes were adopted by a vote of 4-0-1.

January 24, 2012 Public Hearing/General Meeting

Several clarifications were discussed and agreed upon. The following motion was made: That the Commission adopt the revised minutes. The motion was made by Mr. Spain and seconded by Mrs. Cameron and unanimously approved.

January 31, 2012 Executive Session

The following motion was made: That the Commission adopt the minutes as submitted. The motion was made by Mr. Cunningham, seconded by Mr. Hutchison and unanimously approved.

Any Other Business (Requires two-thirds vote of Commission)

The following motion was made: The Commission discuss Mr. Conze's recent meetings regarding Affordable Housing. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved.

Mr. Conze said that he recently met with the Board of Finance about affordable housing. He is urging them to establish an Affordable Housing Fund so that money can be deposited in a specifically allocated fund to create affordable housing. He said that the Town needs to work on formulating an implementable affordable housing plan. In many aspects, the plan will be an update of the Planning & Zoning sub-committee report that was produced a few years ago. He said that many different groups need to cooperate in order to bring affordable housing to fruition.

There being no further business, the following motion was made: That the Commission adjourn the meeting. The motion was made by Mrs. Cameron, seconded by Mr. Spain and unanimously approved.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director